

Mail Stop Interference
P.O. Box 1450
Alexandria, VA 22313-1450
Tel: 571-272-9797
Fax: 571-273-0042

Paper 1
Filed: February 2, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

DONALD L. ELBERT, and MICHELLE K. MORRIS
Junior Party
(Patent 6,813,470)

v.

JOSEPH LOVETTE
Senior Party
(Application 11/162,048)

Patent Interference No. 105,793 (JL)
(Technology Center 2800)

DECLARATION – Bd.R. 203(b)¹

¹ "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 Part A. Declaration of interference

2 An interference is declared (35 U.S.C. § 135(a)) between the above-
3 identified parties. Details of the application(s), patent (if any), reissue
4 application (if any), count(s) and claims designated as corresponding or as not
5 corresponding to the count(s) appear in Parts E and F of this DECLARATION.

6 Part B. Judge managing the interference

7 Administrative Patent Judge Jameson Lee has been designated to
8 manage the interference. Bd. R. 104(a).

9 Part C. Standing order

10 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this
11 DECLARATION. The STANDING ORDER applies to this interference.

12 Part D. Initial conference call

13 A telephone conference call to discuss the interference is set for 1:00
14 p.m. (Eastern) on March 17, 2011 (the Board will initiate the call).

15 No later than four business days prior to the conference call, each party
16 shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd.
17 R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

18 A sample schedule for taking action during the motion phase appears as
19 Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the
20 schedule prior to the conference call and to agree on dates for taking action. A
21 typical motion period lasts approximately eight (8) months. Counsel should be
22 prepared to justify any request for a shorter or longer period.

1 Part E. Identification and order of the parties

2 Junior Party

3
4 Named Inventors: Donald L. Elbert, and Michelle K. Morris, both of
5 Lexington, Kentucky
6

7
8 Involved Patent: U.S. Patent No. 6,813,470, issued November 2,
9 2004, based on Application No. 10/617,313, filed
10 July 10, 2003
11

12 Title: HIGH DENSITY FOAM ROLL
13

14 Assignee: LEXMARK INTERNATIONAL, INC.
15

16 Senior Party

17
18 Named Inventor: Joseph Lovette, Earleville, Maryland
19

20 Involved Application: Application No. 11/162,048, filed August 26,
21 2005
22

23 Title: HIGH DENSITY FOAM ROLL
24

25 Assignee: FOAMEX INNOVATIONS OPERATING
26 COMPANY
27

28 The senior party is assigned exhibit numbers 1001-1999. The junior party
29 is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The
30 senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

1 Part F. Count and claims of the parties

2 Count 1

3 Claim 18 of Elbert's Patent No. 6,813,470

4 or

5 Claim 28 of Lovette's Application No. 11/162,048

6 The claims of the parties are:

7 Elbert: 1- 25

8 Lovette: 28

9 The claims of the parties which correspond to Count 1 are:

10 Elbert: 1- 25

11 Lovette: 28

12 The claims of the parties which do not correspond to Count 1, and therefore
13 are not involved in the interference, are:

14 Elbert: none

15 Lovette: none

16 The parties are accorded the following benefit for the Count:

17 Elbert: none

18 Lovette: Application. No. 10/601,088, filed June 20, 2003,
19 now Patent No. 7,005,458, issued February 28,
20 2006

1 Part G. Heading to be used on papers
2
3 The following heading must be used on all papers filed in this interference,
4 see SO ¶ 106.1.1:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

DONALD L. ELBERT, and MICHELLE K. MORRIS
Junior Party
(Patent 6,813,470),

v.

JOSEPH LOVETTE
Senior Party
(Application 11/162,048).

Patent Interference No. 105,793 (JL)
(Technology Center 2800)

Part H. Order form for requesting file copies

When requesting copies of files, use of SO Form 4 will greatly expedite processing of the request. Please attach a copy of Parts E and F of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

/Jameson Lee/
Administrative Patent Judge

Enc:

Copy of STANDING ORDER

Copy U.S. Patent 6,813,470

Copy of claims of Application 11/162,048

Revised 3 January 2006

1 cc (via overnight delivery):
2

3 Attorney for Elbert:
4

5 LEXMARK INTERNATIONAL, INC.
6 INTELLECTUAL PROPERTY LAW DEPARTMENT
7 740 WEST NEW CIRCLE ROAD
8 BLDG. 082-1
9 LEXINGTON KY 40550-0999
10

11 Attorney for Lovette:
12

13 CONNOLLY BOVE LODGE & HUTZ, LLP
14 P O BOX 2207
15 WILMINGTON DE 19899